

DANILO T. AGUILAR, F0198
Attorney at Law
P.O. Box 505301
First Floor, San Jose Court Building
Cor. Ghiyeghi St. & Wischira Way
San Jose, Saipan, MP 96950
TELEPHONE: (670) 234-8801
FAX: (670) 234-1251

Attorney for Plaintiff
Kamala Bade Mesik

IN THE UNITED STATES DISTRICT COURT
OF THE
NORTHERN MARIANA ISLANDS

KAMALA BADE MESIK,
Plaintiff
v.
DKK INC. AND KIM HONG KYUN
Defendants

CIVIL ACTION NO. 07-0019

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTION TO
STRIKE DECLARATIONS.**

COMES NOW Plaintiff, by and through counsel of record
Danilo T. Aguilar, and hereby submits her response (opposition) to Defendants'
motion to strike declarations. This response is supported by the pleadings filed in
this matter, the attached declaration of Javier Atalig, Jr., declaration of Danilo T.
Aguilar, and any evidence that may be adduced at a hearing on this motion.

ARGUMENT

First, Plaintiff does not dispute the language contained in Local Rule
7.1.c.4 nor does Plaintiff dispute the dates of filing that are alleged in Defendants'
motion. However, it is Plaintiff's position a motion to strike should not be
granted upon a showing that a failure to timely file an opposition brief was

1 substantially justified or was harmless. *See Galentine v. Holland America Line-*
2 *Westours, Inc.*, 333 F.Supp.2d 991 (W.D. Wash. 2004), *citing Yeti by Molly LTD v.*
3 *Deckers Outdoor Corporation*, 259 F.3d 1101. In this case, Plaintiff submits the
4 declaration of Javier Atalig, Jr. to explain the delay in the filing of the opposition
5 brief. Mr. Atalig was unavailable to complete his supporting declaration until
6 after December 20, 2007. The filing of the opposition brief without the
7 declaration of Javier Atalig would have made the opposition brief incomplete. *See*
8 Declaration of Danilo Aguilar.

10 In addition, the court should consider that the “late filing” was
11 harmless to the Defendants. “The Ninth Circuit has analyzed the element of
12 harmless by looking at whether the failure to disclose information prejudiced the
13 opposing party”. *Galentine*, 333 F.Supp.2d at 993. Although Plaintiff does not
14 downplay the seriousness of this oversight in complying with Local Rule 7.1.c.4,
15 Plaintiff would note that Defendants have not asserted any prejudice for the 8 day
16 delay in the filing of the opposition brief. Unlike in the situation of failing to
17 make timely filings of disclosures in discovery, the opposition brief here does not
18 contain any disclosures regarding evidence that would be critical to a party’s case.
19 Defendants do not make any claim that they will be unable to properly prepare for
20 trial or that they have been unable to formulate a response to the opposition by the
21 small delay in filing.

24 CONCLUSION

25 Although Plaintiff admits that the local rule requires filing of briefs
26 within a certain period of time and that Plaintiff did not comply with those time
27 requirements, Plaintiff believes that there was justification for the late filing and
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1 that the delay was “harmless” to the Defendants. On that basis, Plaintiff requests
2 that Defendants’ motion to strike be denied.

3 Respectfully submitted this 9th day of January, 2008.
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6 /s/ Danilo T. Aguilar
7 **DANILO T. AGUILAR, ESQ.**
8 Attorney for Plaintiff
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